

California's Urban and Rural Brownfields (CURB) Coalition

Department of Toxic Substances Control as Grant Recipient Revolving Loan Fund (RLF) Grant Program Application

Project and Coalition Description: This document is an application to obtain funding from the United States Environmental Protection Agency's (USEPA's) Revolving Loan Fund Grant Program. The Department of Toxic Substances Control (DTSC) is working with the City of Los Angeles and the Redevelopment Agency of the City and County of San Francisco to establish the coalition referred to as California's Urban and Rural Brownfields (CURB) Coalition. The CURB Coalition, with DTSC as the grant recipient, is seeking to capitalize a Revolving Loan Fund (RLF) Program to provide loans and subgrants to communities within the State to support cleanup activities at contaminated urban and rural brownfields sites. The requested \$2,500,000 for hazardous substances sites and \$500,000 for petroleum sites (for a total of \$3.0M) will provide loan or subgrant funding for cleanup of a number of brownfields sites over the next five years. The exact number of sites to be supported by this program is dependent upon the amount of funding provided in each loan/subgrant. CURB also anticipates using a portion of the funds to establish a loan guarantee program.

I. THRESHOLD CRITERIA FOR REVOLVING LOAN FUND GRANTS

A. Applicant Eligibility: DTSC is eligible as a State agency authorized by the California State Legislature to protect public health and safety and the environment. Coalition partners include the City of Los Angeles and the Redevelopment Agency of the City and County of San Francisco. All agencies are eligible as government entities created by the State Legislature or as redevelopment agencies chartered and/or sanctioned by the State (refer to Appendix A). Each CURB Coalition partner has submitted a letter agreeing to be a part of the coalition (refer to Appendices B and C).

B. Description of Jurisdiction: Jurisdiction for this proposed grant includes any eligible property within California, with a significant portion of the grant funding going to the cities of Los Angeles and San Francisco. Targeted Coalition communities include, but are not limited to: 1) the Wilmington Industrial Park area near the Port of Los Angeles; multiparcel redevelopment projects, and the Crossings at 29th Street; the Adams-LaBrea Project; and the Washington Boulevard Corridor Projects; and 2) Bayview Hunters Point Survey and Visitacion Valley in San Francisco. DTSC will identify the economically distressed urban and rural sites/projects not included in the Los Angeles and San Francisco areas.

C. Community Notification: The public was notified through the following actions:

- November 30, 2005 – The proposal was presented to an open public meeting of the Los Angeles City Council Committee on Housing and Economic Development. The public was invited to submit comments.
- November 30, 2005 - The League of California Cities distributed an announcement of the draft RLF proposal, via Listserv.
- December 1, 2005 – The Center for Creative Land Recycling posted an announcement of the RLF proposal on their website.
- December 2, 2005 - Subscribers of the Center for Public Environmental Oversight (Brownfields Internet Forum) were notified of the RLF proposal and requested to provide comments to DTSC.
- December 5, 2005 – An Informational Memorandum was distributed to the San Francisco Agency Commission and to an Agency mailing list which included the general public.

- December 6, 2005 - DTSC announced its pursuit of the RLF, solicited public comments and posted copies of the application on DTSC's website. Cal/EPA distributed an announcement via its Listserv.
- December 13, 2005 – The grant proposal was presented to an open meeting of the full Los Angeles City Council. The public was invited to submit comments.

D. Letter from the State or Tribal Environmental Authority: DTSC is the applicant for this grant and is a State agency. A letter in support of DTSC's pursuit of the RLF proposal was submitted by the California Environmental Protection Agency's (Cal/EPA's) Assistant Secretary, dated December 12, 2005 (refer to Appendix D).

E. Cleanup Authority and Oversight Structure:

E. 1. CURB Coalition projects will use the oversight services of DTSC's Voluntary Cleanup Program (VCP). DTSC has the regulatory authority to oversee the cleanup of hazardous substances or petroleum waste sites as well as to certify that a site has been remediated in accordance with State and federal laws. DTSC will ensure that site cleanups are protective of public health and safety and the environment and will provide technical oversight and approval of all required cleanup plans. As the grant applicant on behalf of the CURB Coalition, DTSC has the necessary jurisdiction, authority and program capacity to ensure adequate program performance of Coalition members, borrowers, and subgrantees, if warranted.

E. 2. The State has the legal authority to access and secure sites in the event of an imminent and substantial endangerment in order to protect public health and the environment or if there is a default of a loan agreement or non-performance (refer to Appendix E).

F. Cost Share: CURB proposes to provide its 20% cost share or \$600,000 in a variety of methods including in-kind services by all coalition partners, pairing the awards of the RLF grant with eligible brownfields or economic development funds (such as Community Development Block Grant funds); or requiring recipients to provide a match of up to 20% in a combination of money, labor, materials or services. The CURB Coalition will ensure that the 20% cost share meets USEPA's definition of an "eligible and allowable expense." In-kind services will involve DTSC or a coalition partner providing such services as program development, marketing, advertising, and community development and outreach; establishing the program by developing guidelines and loan and subgrant procedures; site selection procedures, and some oversight of technical services.

G. Legal Authority to Manage a Revolving Loan Fund: The legal opinion of DTSC's authority to manage grants is contained in Appendix F. In 2004, DTSC obtained Budget Act authority. The Budget Act addresses DTSC's ability to hold funds, make loans, enter into loan agreements, and collect repayments specified under a RLF Program or any additional sub-accounts that may be developed under the State's Revolving Loan Fund. DTSC also has the authority to enter into intergovernmental cooperative agreements with other governmental agencies.

II. RANKING CRITERIA FOR RLF GRANT PROGRAM

A. Revolving Loan Fund Grant Proposal Budget: The CURB Coalition seeks a \$3.0 million RLF grant, of which \$2.5 million will be allocated for the cleanup of hazardous substance release sites and \$500,000 will be made available for cleanup of petroleum sites. Up to \$1.7 million will be allocated to fund loans. Loans will be made to eligible parties, local governments and non-profit organizations. The maximum loan amount will be determined by the CURB's Advisory Group (refer to section C.1. below), with an estimated average loan amount of \$200,000. CURB expects to loan all budgeted funds within the five-year performance period, with a goal of funding 7 to 12 loans. Funds up to \$1.1 million will be allocated as cleanup subgrants to eligible local governments and non-profit organizations. CURB's goal is to provide subgrants for 5 to 10 projects during the five-year performance period. Cleanup subgrants will not exceed \$200,000 per site for any single project. A Loan Guarantee Program (if developed) will use a maximum of 10 percent of budgeted funds. The cost share total for all fund types combined will be 20% (\$600,000) and

will be provided by the CURB Coalition partners and by the recipients of the loans or subgrants by a combination of money, labor, materials or other in-kind services.

Table 1: Hazardous Substances Loan and Subgrant Budget Proposal

Budget Categories	Project Tasks for Loans (at least 60 percent of amount requested)				
(programmatic costs only)	Program Development/ Community Involvement	Establish RLF Program	Site Selection & Operation	Site Cleanup Planning & Oversight	Total
Personnel	\$3,000	\$8,000	\$4,000	\$0	\$15,000
Fringe Benefits	\$996	\$2,656	\$1,328	\$0	\$4,980
Travel	\$3,520	\$0	\$1,500	\$0	\$5,020
Equipment	\$0	\$0	\$0	\$0	\$0
Supplies	\$1,000	\$0	\$0	\$0	\$1,000
Contractual	\$4,000	\$12,500	\$100,000	\$0	\$116,500
Loans	\$0	\$0	\$1,357,500	\$0	\$1,357,500
Subtotal:	\$12,516	\$23,156	\$1,464,328	\$0	\$1,500,000

Budget Categories	Project Tasks for Subgrants (no more than 40 percent of amount requested)				
(programmatic costs only)	Program Development/ Community Involvement	Establish RLF Program	Site Selection & Operation	Site Cleanup Planning & Oversight	Total
Personnel	\$0	\$0	\$7,000	\$0	\$7,000
Fringe Benefits	\$0	\$0	\$2,324	\$0	\$2,324
Travel	\$2,863	\$0	\$1,000	\$0	\$3,863
Equipment	\$0	\$0	\$0	\$0	\$0
Supplies	\$1,813	\$0	\$0	\$0	\$1,813
Contractual	\$5,000	\$0	\$30,000	\$0	\$35,000
Subgrants	\$0	\$0	\$950,000	\$0	\$950,000
Subtotal:	\$9,676	\$0	\$990,324	\$0	\$1,000,000
Total – Table 1	\$22,192	\$23,156	\$2,454,652	\$0	\$2,500,000
Cost Share – 20- (recipient/in-kind)	\$60,000	\$20,000	\$75,000	\$345,000	\$500,000

Table 2: Petroleum Loan and Subgrant Budget Proposal

Budget Categories	Project Tasks for Loans (at least 60 percent of amount requested)				
(programmatic costs only)	Program Development/ Community Involvement	Establish RLF Program	Site Selection & Operation	Site Cleanup Planning & Oversight	Total
Personnel	\$0	\$1,500	\$1,700	\$0	\$3,200
Fringe Benefits	\$0	\$498	\$565	\$0	\$1,063
Travel	\$1,000	\$0	\$937	\$0	\$1,937
Equipment	\$0	\$0	\$0	\$0	\$0
Supplies	\$500	\$0	\$0	\$0	\$500
Contractual	\$1,500	\$6,800	\$40,000	\$0	\$48,300
Loans	\$0	\$0	\$300,000	\$0	\$300,000
Subtotal:	\$3,000	\$8,798	\$343,202	\$0	\$355,000

Budget Categories	Project Tasks for Subgrants (no more than 40 percent of amount requested)				
(programmatic costs only)	Program Development/ Community Involvement	Establish RLF Program	Site Selection & Operation	Site Cleanup Planning & Oversight	Total
Personnel	\$0	\$0	\$3,900	\$0	\$3,900
Fringe Benefits	\$0	\$0	\$1,295	\$0	\$1,295
Travel	\$1,800	\$0	\$1,005	\$0	\$2,805
Equipment	\$0	\$0	\$0	\$0	\$0
Supplies	\$500	\$0	\$0	\$0	\$500
Contractual	\$1,500	\$0	\$35,000	\$0	\$36,500
Subgrants	\$0	\$0	\$100,000	\$0	\$100,000
Subtotal:	\$3,800	\$0	\$141,200	\$0	\$145,000
Total – Table 2	\$6,800	\$8,798	\$484,402	\$0	\$500,000
Cost Share – 20%-(recipient/in-kind)	\$10,000	\$0	\$20,000	\$70,000	\$100,000

Budget Narrative

Task 1: Program Development-Community Involvement: Program development includes establishing the framework for a loan and subgrant program. CURB will conduct outreach aimed at urban and rural cities and communities, community-based organizations, non-profit organizations and redevelopment or other local agencies. Outreach activities will include an opportunity for input during program development and implementation. CURB will also develop marketing materials including brochures, e-newsletters, mailing lists, and/or establishing an Internet site with Listserv capability. CURB will conduct a survey to determine interest in establishing a loan guarantee program as part of this grant. Cost share for this task is estimated to be \$70,000. Travel funds will be used to conduct outreach activities, attend coalition meetings, and attend USEPA sponsored educational events.

Task 2: Establish RLF Program: Establishing the program involves creating loan/subgrant program guidelines and procedures that outline eligibility and site screening criteria, define roles of the program manager, fund manager and coalition partners; and prepare application guidance documents and other legal documents for administration of the RLF Program. Cost share for this task is estimated to be \$20,000. Separate guidelines will be developed for the loan guarantee program.

Task 3: Site Selection & Operation: Site selection and program operation will involve processing loans and subgrants, screening applications, selecting sites based on eligibility criteria and guidelines, preparing financial and other monitoring reports, developing support documents, and other operational functions necessary to make loans and subgrants. Contractor support in the amount of \$205,000 has been allocated to handle the disbursement of funds and to provide ongoing loan repayment support activities as well as monitoring and reporting. CURB estimates \$95,000 in cost share from grant recipients that may include fees from borrowers, interest on loans and other program income to meet the cost share, and in-kind services, specifically, personnel services. Travel funds have been allocated to allow CURB partners an opportunity to hold meetings to discuss selection of sites and to report on the effectiveness of the RLF Program.

Task 4: Site Cleanup, Planning and Oversight: This task provides for DTSC's oversight of cleanup activities to ensure each participating site meets the standard of protection of public health and the environment. DTSC will ensure the community and other interested stakeholders are provided with information about the cleanup and reuse proposal, progress reports and an opportunity to provide input. Cost share for this task is estimated to be \$415,000. Reimbursement by the loan recipient or subgrantee will be required for services provided by the oversight agency through the VCP.

B. Community Need:

B. 1. Target Communities: Target communities for this application include the densely populated cities of Los Angeles and San Francisco and rural areas throughout the State that have been blighted by the closure of businesses and industries.

According to the 2000 U.S. Census, the San Francisco neighborhood of Bayview Hunters Point, located adjacent to the Hunters Point Naval Shipyard, has 34,305 residents and represents a wide array of ethnic backgrounds: 44% African American, 26% Asian, 16% Latino, 8% White and 6% Other. Unemployment rates in this small community are more than twice city-wide rates and incomes are far below city-wide medians. Commercial property values are depressed and the area suffers from a lack of retail services for local residents.

According to the 2000 U.S. Census, 18.6% of households within the City of Los Angeles are living below the poverty level compared to the national rate of 12%. The average unemployment rate is 9.3% compared to the national rate of 5%. Low-income individuals and families are primarily clustered in predominately minority communities, where unemployment and poverty levels are high. The target community of Wilmington Industrial Park is 97% non-white (mostly Hispanic) and consists of 80% low to moderate income persons, with 39.7% of families having incomes below the poverty level.

A chart presenting the ethnic and racial makeup of the two coalition cities is attached as Appendix G.

DTSC anticipates targeting rural communities with known contaminated sites impacted by closed businesses and industries such as stores, lumber mills, canneries, and mines. Rural areas have poverty levels as high as 19%.

B. 2. Community Benefit: Funds will be used to assist in the cleanup of brownfields sites statewide and to provide loans, subgrants, or loan guarantees for projects within redevelopment areas and economically disadvantaged communities. The target project areas are some of the highest environmental priorities and community interest areas in California. Remediation and development of these brownfields sites will provide these communities with economic vitality by creating jobs and increasing tax revenue and

commercial activity. It will also help meet the housing demand and improve the health and aesthetic quality of urban centers.

The cities of Los Angeles and San Francisco represent some of the most disadvantaged neighborhoods in California. The Coalition will pool its resources and expertise in developing and executing a loan/subgrant program that will consider the needs of the State's population and economic and environmental diversity. CURB partners are experienced in managing urban environmental, economic and social issues and have master redevelopment plans; therefore, the Coalition will be efficient in setting up the program to quickly address contamination at brownfields sites. DTSC will represent other urban and rural economically distressed areas and disadvantaged communities throughout the State.

Remediation of contaminated sites in the City and County of San Francisco's target community will eliminate blight and increase public safety, health and welfare for the Bayview Hunters Point and Visitacion Valley Communities, which are adjacent to Light Rail Transit (LRT) stations, and provide vital transit links to other parts of the city. The redevelopment projects will stimulate private and public development and create opportunities for new residential and commercial uses in mixed-use and other transit-oriented developments to meet the high demands for market rate and affordable housing.

For the Los Angeles target area of Wilmington, remediation will boost property sales and increase redevelopment with more attractive uses at higher economic values, thus improving the overall value of the neighboring businesses and residential properties. It will also create jobs for local residents.

B. 3. Impact of Brownfield Properties: The Coalition cities provide some of the most striking examples of the adverse impacts brownfields sites have on communities. The history of the San Francisco area and the continued prevalence of industrial uses in Bayview Hunters Point makes environmental pollution a significant problem. This area alone has as many as 60 documented releases of hazardous materials involving heavy metals, oils, volatile organics, and carcinogens from auto repair shops, service stations, and dry cleaners. The area contains as many as 634 vacant parcels and 160 vacant buildings. Nearly 25% of the area's buildings are in deteriorated or dilapidated condition or show signs of deferred maintenance. This area continues to be home to more than 500 heavy and light industrial facilities, retail and commercial establishments and a richly diverse community of residents. This grant could result in an estimated 5% to 10% reduction of brownfields sites in this area. The Visitacion Valley area is 46 acres and many parcels may be impacted by solvents from abandoned manufacturing facilities, gas stations and other commercial activities. Many of the industrial areas are adjacent to residential neighborhoods, creating conflicts between industrial and residential uses. Remediation and cleanup of brownfields sites is essential to revitalize this area and to stimulate economic development.

Los Angeles has extensive areas of blight and substandard commercial and industrial uses. The Wilmington Industrial Park neighborhood is comprised of 232 acres still used for oil extraction. Prior investigations in this area, as well as other areas around the city used for oil production, show extensive contamination from petroleum hydrocarbons and heavy metals related to oil exploration and production. These areas have many contaminated brownfields sites that hinder redevelopment. The areas surrounding industrial properties also contain many contaminated sites, often in close proximity to residences and schools. Residents have long claimed adverse health effects due to these factors and from particles blowing off outside storage of materials being shipped through the port. The City of Los Angeles has extensive experience in combating brownfields challenges. Receipt of this grant will assist in reducing any actual or perceived health risks in these areas and will promote redevelopment. It is anticipated that receipt of this grant will assist in further reversing the threat of blight in this highly populated urban area.

California's rural areas have experienced many business and industrial closures that have created thousands of brownfields sites. These sites have had significant impacts on public health and safety, the environment and local economies. For example, more than 50,000 mining sites have resulted in streams, soil, and groundwater being contaminated with mercury, arsenic, lead, and carcinogens. These properties

must be remediated before these sites can be reused. Many of these rural sites are land-locked by surrounding public lands, i.e. State and national forests. Cleanup of existing brownfields sites not only represents an alternative to greenfield development, but may be the only viable option for the rural areas because of the sparse, existing infrastructure.

C. Business Plan for RLF Program:

C. 1. Business Concept: CURB will form an Advisory Group comprised of the CURB partners to develop specific guidelines and an application process for the RLF Program. The priority in terms of RLF assistance to applicants will be in low interest loans, cleanup subgrants, and finally leveraging with other commercial/environmental lenders. In addition, CURB will consider the development of a loan guarantee program. These strategies will be used to maximize and revolve the program funds for future projects.

a. Loan Terms: DTSC will function as the Loan Manager for the RLF Program. The intent is to maximize the desirability of loans by offering flexible, project-specific terms. The maximum loan amount will be set by the Advisory Group to ensure adequate funds are available for as many potential applicants as possible, but typically loans are expected to be approximately \$200,000. Loan terms and conditions will be based on the specific project, the availability of funds, and the level of risk associated with these projects (based on commercial loan standards). CURB partners will work with the applicants to determine, through standard underwriting guidelines, the appropriate loan amounts based on the extent of the remediation costs and overall project economics. Loan terms of up to 10 years will be offered. A low simple interest rate (at or below the prime rate) per annum will typically be charged. Other loan payment options may be considered, such as interest only payments for a specified term (up to 10 years) with a balloon payment due at loan maturity. If necessary, deferrals of principal and interest payments will be considered for up to 10 years, and interest free loans may also be considered depending on the level of public benefit and concurrence by CURB partners.

b. Loan Conditions: RLF loans will be secured by a deed of trust and promissory note on the property proposed for remediation. CURB may consider other forms of collateral such as equipment, accounts receivable, and personal guarantees. Loans will be due and payable on the sale of the property or other assets, and/or if the borrower violates any continuing remediation requirements or security covenants. The Loan Manager will prepare a written report on each project. The report will include historical site information, borrower information, and a financial and cash flow analysis. The report will be prepared for review and approval consideration by CURB partners.

c. Regulatory Conditions: Any loan, subgrant, or loan guarantee will require an approved site remediation plan, valid local and State permits, and assurance that all work will be done in compliance with Davis Bacon rules and other applicable federal requirements. Selected site proponents will enter into a State VCP agreement which will outline regulatory cleanup requirements.

d. Long Term Fund Capital Management: To replenish the RLF Program funds, CURB will use funds (principal and interest) repaid from loans and may also partner with other environmental lenders, thereby making a larger amount of capital available for site remediation and redevelopment.

e. Subgrants: The maximum amount for subgrants will be \$200,000 for any site. CURB will develop criteria as to the type of recipients eligible to receive a subgrant and the types of cleanup activities the subgrant will fund. CURB will coordinate public outreach to determine interest in the subgrant program, and solicit comments on the application and scoring procedure. CURB will solicit eligible subgrant applications and the Loan Manager will review the subgrant applications received for consistency with proposed subgrant criteria. The Loan Manager will prepare a written report for the CURB partners who will review and approve the subgrant awards based on established CURB policy and procedures and adherence to USEPA guidelines. Subgrant applicants will be selected based on the submission and subsequent scoring of applications.

f. **Loan Guarantees:** CURB will consider the development of a loan guarantee program. This program would be developed in conjunction with a commercial bank or other type of financial institution. A Loan Guarantee Program would assist financial institution(s) in the reduction of risk to their loan portfolio, maximize their leveraging opportunities, and provide other financing options that may not be currently available to a borrower. CURB will consider allocating up to 10% of RLF Program funds for a loan guarantee program and related contractor services.

C. 2. Market Analysis: Loans and/or subgrants will target urban infill areas and economically distressed rural communities. Specifically, the City of Los Angeles has targeted industrial properties within the Wilmington Industrial Park Area near the Port of Los Angeles and proposed redevelopment areas within the Crossings at 29th Street, the Adams-LaBrea Project and the Washington Boulevard Corridor Project. Target areas in the City and County of San Francisco include project areas undergoing transformation, including Bayview Hunters Point Area and Visitacion Valley. DTSC will target economically distressed rural communities including those areas impacted by closures of agricultural-related businesses such as canneries, food processing plants as well as lumber mills and mining operations.

CURB will create marketing materials and perform outreach to inform known private developers, non-profit entities, and local governments of the program, and to determine interest in these target communities for utilizing the funds. Marketing activities will include development of fact sheets and brochures, public meetings and speaking engagements, Internet services and press packets. CURB will provide outreach and education to interested stakeholders, such as community organizations within the targeted communities, local governments, redevelopment and economic agencies, other State government agencies, various professional and trade associations, and non-profit organizations.

CURB will commit the funds to eligible projects in a five-year period and anticipates receiving the funds in fall of 2006. The goal is to solicit applications for eligible projects upon receipt of the grant, making the first awards within one year of receipt.

C. 3. Site Selection: CURB will develop application guidelines that specify the eligibility criteria as well as a scoring system to select and prioritize projects. Projects will be required to demonstrate:

- Applicants are eligible and meet the brownfields legal definition such as conducting "All Appropriate Inquiries." Applicants must be in compliance with State and federal laws. As part of the screening process, CURB partners will provide initial review to determine if a site and the participants qualify for the RLF Program. In addition, participants agree to enter into an oversight agreement that ensures legal mandates and obligations for site investigation and cleanup will be met.
- Borrowers and/or subgrantees must qualify for the funds and demonstrate their ability to repay or capitalize on the loan or subgrant or be able to leverage any USEPA financial assistance with tax increment financing generated following the adoption of a cleanup or redevelopment plan. CURB staff will ensure necessary reviews are performed in accordance with the financial institution's guidelines and consult with qualifying financial institutions.
- Readiness for the project to proceed by evaluating issues of ownership, contractual relationships and site characterization; proponents must agree to a schedule for developing and implementing cleanup and reuse plans.
- Reuse plan will benefit the community by meeting economic, social, open space and recreational, sustainability, and housing demands.
- An ability to manage grants/subgrants and the applicant's experience with managing grants or other funding programs.

Subgrants: Eligible recipients will compete for subgrants using the following criteria:

- *Potential Economic Benefit:* increases tax base, creates jobs or serves as a magnet for other retail and commercial development;

- *Social Benefit*: provides low income housing, addresses environmental justice issues, reduces and/or addresses health risk questions posed by surrounding residents;
- *Cultural or Historical Significance*: preserves culturally sensitive or historic properties;
- *Creation or Restoration of Sensitive Land Uses*: creates wildlife preserves, parks, greenways, open space, and/or hospital or medical services or other non-profit services;
- *Sustainable Reuse/Green Building*: creates buildings and supporting infrastructure that minimizes the use of resources, reduces harmful effects on the environment, creates healthier environments for people, and incorporates green building or other smart growth principles, including reuse of infrastructure and public transit oriented projects;
- *Reuse Planning*: Certainty and identification of specific plans for reuse within a designated redevelopment area;
- *Financial Planning*: Financing arrangements and/or funds have been set aside or identified for the redevelopment or reuse project; reliability of the funding;
- *Community Support*: Project is supported by the community and public officials.

C. 4. Management and Operational Teams: CURB partners have extensive in-house expertise that will be relied upon to perform the majority of the management and operational functions of advertising, implementing and monitoring the grant.

a. Environmental: DTSC's technical staff includes approximately 189 Hazardous Substances Scientists, 110 Hazardous Substances Engineers, 41 Engineering Geologists, 20 Toxicologists, 10 Industrial Hygienists, and 30 Public Participation Specialists with professional accreditations and the extensive experience necessary to oversee all phases of cleanups including public involvement and outreach. DTSC will assign project management staff and specialized support to ensure the cleanup work is performed following the most up-to-date technical guidance documents and in accordance with applicable laws, policies and procedures.

b. Financial: All CURB partners have grant management expertise involving budgeting, fiscal systems, accounting, revenue projections, resource allocation, and monitoring and reporting of expenditures. This expertise will ensure compliance with State and federal requirements. DTSC will be responsible for the overall implementation of the grant. These responsibilities will include review of work plans, oversight of operational matters, entering into agreements for tracking expenditures, and fiscal coordination between CURB partners.

c. Analytical: Environmental analytical services will generally be obtained by the project proponent and the proponent must use a State certified laboratory. While CURB does not anticipate the need to contract for analytical work, DTSC will have access to the project proponent's laboratory for consultation and quality assurance, as necessary. DTSC staff also will have access to DTSC's laboratory, if required.

d. Legal: CURB will rely on in-house counsel and contract management staff to ensure adherence to all applicable laws and regulations and to assist in the development of CURB's administrative and operational manual and guidelines. In-house counsel and contract specialists are available to provide legal advice in executing legal documents, including contracts with any lending institutions, voluntary cleanup agreements, and long-term institutional controls.

e. Record Keeping: CURB partners will be responsible for ensuring that funds are used for authorized purposes and for providing the Fund Manager with tracking data, work plans, and expenditure documents. All RLF Program records will be maintained by DTSC and will be available for review by CURB partners and USEPA as provided in the cooperative agreement. Contractor staff may be used to maintain loan records for CURB, which could include preparation of loan documents, providing loan servicing and execution, monthly invoicing records, 1099 reporting, and payment history documentation.

D. Sustainable Reuse of Brownfields/Development Potential:

D. 1. Prevent Pollution and Reduce Resource Consumption: DTSC is a Department within Cal/EPA and is committed to the Agency's general environmental policy to "...reduce ecological impacts from our business operations, lead by example and assist agencies in their efforts to become more environmentally sustainable." Carrying out the policy includes operating in a manner that prevents pollution, minimizes adverse impacts to the environment, and promotes pollution prevention, environmentally preferred products and sustainable business practices. Specifically, a number of policies have or are being developed that guide statewide sustainable and restorative programs including waste reduction policy, energy policy, transportation policy, sustainable building water conservation and quality and sustainable landscape design and maintenance. CURB embraces these policies and other specific programs developed by each City that promote sustainable reuse of brownfields sites. For example, the Redevelopment Agency of the City and County of San Francisco is recognized as a national leader in programs for municipal energy conservation, recycling, water conservation, and pollution prevention. Additionally, San Francisco has a very active environmental advocacy community, whose members work locally to maintain and restore their environmental heritage and to protect the public's health. In implementing the RLF Program, CURB will use these smart growth and sustainable policies as a guide in making decisions regarding site selection, cleanup and reuse plans with the added goals of reducing urban sprawl, traffic congestion and air pollution, and supporting sound growth patterns including, infill development in California population centers.

D. 2. Promote Economic Benefits: CURB expects a number of economic benefits will be gained through the RLF Program. For instance, the City of San Francisco's Bayview Hunters Point project is expected to create \$2.4 million of new floor space for a variety of public and private uses and create more than 5,000 new jobs and 3,700 new dwellings. DTSC will initially target funds to communities faced with economic and social hardships. Additionally, DTSC will identify communities negatively affected by jobs lost due to closure of agricultural-related services and food processing plants. Communities located in the rural areas of Kern, Tulare, and Humboldt counties have recently inquired about brownfields funding assistance. By providing funding to these areas, contamination issues can be addressed and new businesses will be attracted to provide jobs and related services. Another benefit includes increased tax revenue to communities that have limited sources of public financing.

D. 3. Promote Vibrant Communities: The CURB Coalition will promote projects that focus on smart growth strategies. This includes investing in established neighborhoods where the projects will enhance housing, transportation, community resources, and open space choices while simultaneously promoting economic sustainability. These established communities are the targeted communities in Los Angeles and San Francisco. California communities have experienced successful urban reuse projects, including areas in Emeryville, Palo Alto, San Diego, San Francisco and Los Angeles, including Hollywood. Hollywood became a center of crime and poverty in the 1980's but through successful commercial redevelopment, including the Hollywood and Highlands Mall, it is once again becoming a tourist mecca. The CURB Coalition will use these model projects to guide future reuse projects that will incorporate mixed use and walk-oriented or transit-oriented communities, encourage development near transit and other services, provide medical and community services, and meet housing demands for the elderly.

Building vibrant communities in California's rural areas is also important. Closed rural businesses have resulted in blighted and contaminated sites that need to be cleaned up to improve the overall community while preserving existing infrastructure. The mountain community of Truckee provides a recent example of a successful, rural, and vibrant community. Community revitalization efforts brought back jobs, while protecting the rural qualities, deterring sprawl and preserving ranchland.

D. 4. Reuse existing infrastructure: Los Angeles and San Francisco plan to utilize existing infrastructure including converting buildings and public space when possible. For instance, San Francisco's redevelopment plan calls for rehabilitating existing commercial and residential space, especially

historic buildings. These local agencies take advantage by utilizing existing infrastructure. The Wilmington Industrial Park area will rely on current infrastructure (including roads, sewers, and water systems) to upgrade a modern business park, while improving traffic circulation and access to services. In rural areas, the use of remediated sites is of particular importance since there is limited infrastructure supporting a less populated, yet geographically large and diverse community.

D. 5. Prevent Future Brownfields: CURB will provide a number of sites with initial cleanup funds that will, in turn, stimulate additional resources and funding to surrounding properties. These activities prompt communities to make other improvements in their area and, consequently, prevent future brownfields. An initial inventory of brownfields sites has been generated for the communities of Wilmington and Hunters Point aimed at identifying specific locations needing funding for cleanups. For instance, the reuse of otherwise contaminated, vacant and underutilized parcels in the San Francisco's Bayview Hunters Point community will serve as a catalyst to generate local economic vitality and prevent the further abandonment of neighboring properties.

D. 6. Green Building Standards: California is a national leader for green building design with more than 20% of the nation's Leadership in Energy and Environmental Design (LEED) certified projects with 20 projects (including the Cal/EPA headquarters building) given the distinction of Platinum or Gold LEED certified. Further, in December of 2004, California Governor Schwarzenegger signed Executive Order S-20-04 that commits the State to aggressive action to reduce State building electricity usage and to adopt cost-effective measures described in the Green Buildings Action Plan. It encourages other commercial building owners to take similar aggressive action through retrofitting, and building and operating the most energy efficient buildings. Following the Governor's lead, CURB will strive to use and promote green building/energy efficient standards by educating potential borrowers about sustainable building practices and selecting projects that follow these practices. These include establishing projects near mass transit, incorporating sustainable design elements, selecting plants that have low water and pesticide needs, incorporating recycled and sustainable construction materials, encouraging energy efficient buildings through passive building design, using natural or highly efficient lighting, using properly sized HVAC systems and encouraging water efficiency. The City of Los Angeles will require that all projects seek LEED green building certification and will give preference to projects near the City's growing Metro Network.

E. Creation and/or Preservation of Greenspace/Open Space or Nonprofit

Purpose: Within the City of San Francisco, the creation of a network of public open spaces and recreational areas, restoration of ecological health to the environment, and reclamation of the heritage of its waterfront is a key strategy for revitalizing the Bayview Hunters Point community. The ultimate goal is an open space and waterfront system that sets the stage for a full-scale cultural and economic renaissance in Bayview Hunters Point. Ecologically healthy, safe and beautiful open spaces and facilities will enhance the area's attractiveness as a place to live, work and play. Efforts will include renovation and maintenance of existing resources in order to create positive open and public places for the community.

Within the City of Los Angeles, just east of the Industrial Park, a 2.43 acre parcel will be assessed to determine the extent of environmental contamination before public greenspace is developed. The property has been used as a railroad right-of-way, automobile parking lot, housed an electrical substation, aboveground tanks, and an oil well. This development will benefit residents who currently lack open space for recreation and solitude. The greenspace will be called "East Wilmington City Park" and is slated to include open space, play fields for softball and basketball, a children's play area and eventually a recreational building. The East Wilmington City Park will also be available to employees from the adjacent Wilmington Industrial Park. Traffic in the City of Los Angeles has become increasingly worse, impacting not only the environment, but also human health. These loans will assist in cleanup of brownfields sites that can then be reused for housing and open-space development near the City's Metro lines. The City's increased transportation oriented housing strategy needs a boost and this loan program will enable the City

to provide incentives to non-profit housing developers interested in increasing the single-family and low-moderate income housing inventory in Los Angeles.

F. Community Involvement:

F. 1. Involving Affected Community: The Coalition partners will coordinate their efforts to inform the various stakeholders (including neighborhood and citizen groups, borrowers, and redevelopers) of cleanup decisions and reuse plans. Public participation and associated public notification are essential and required elements of the State's cleanup program. Specifically, DTSC will provide any affected person with an opportunity to participate in the decision-making process regarding the proposed action. Public participation activities will be developed for each cleanup project in consultation with staff experts and based on DTSC's Public Participation Procedure and Policy Manual. The California Environmental Quality Act (CEQA) mandates the public be notified and provided an opportunity for input during the development of community reuse plans and project planning phases. The Redevelopment Agency of the City and County of San Francisco relies on the elected members of the Bayview Hunters Point Project Area Committee to provide a vehicle for public input and comment on the Agency's activities and the neighboring India Basin Industrial Park and Bayview Industrial Triangle project areas.

An initial notification will be made within the targeted communities and interested rural communities to assess the level of community interest and concern on cleanup and reuse plans. Responses to initial notification will be used to determine appropriate future community notification mechanisms. Many California communities represent diverse cultures and require information to be translated into languages that will meet the needs of a community. A site-specific community profile will be developed to outline the specific community needs including the frequency of meetings and notices, language and cultural needs, identifying a list of key contacts and citizen groups and establishment of information repositories.

F. 2. Partnerships: CURB is comprised of DTSC, the City of Los Angeles, and the Redevelopment Agency of the City and County of San Francisco. This Coalition partnership may consider additional partners in the future. For instance, the Nevada County Department of Environmental Health has a registry of nearly 3,000 mine sites that could provide insight to specific properties and reuse issues. This County agency has indicated an interest in becoming a partner.

F. 3. Progress Reports: At a minimum, DTSC will provide routine updates about the RLF Program and status reports in the form of fact sheets, in addition to meeting federal reporting requirements. Fact sheets will be routinely posted on DTSC's website. Outreach materials will be developed to inform communities of project updates and progress at key steps within the cleanup and reuse process. Each of the CURB partners will provide information on their website and provide a mechanism for public comment. For instance, the City of Los Angeles Brownfields Program will provide outreach and progress reports to the neighborhood councils and the Community Advisory Council (CAC), and request that they distribute the information in the languages of the community.

F. 4. Community Based Organizations: California has a diverse resource of environmental research and education institutions and public advocacy groups. The CURB Coalition plans to form partnerships with many organizations that have expertise in brownfields cleanup and redevelopment including:
The Great Valley Center – Ellen Herod (209) 522-5103: A non-profit organization which supports activities and organizations that promote the economic, social, and environmental well-being in California's Central Valley.

League of California Cities – Jennifer Lewis (916) 658-8226: A non-profit association of California city officials who work together to enhance their knowledge and skills, exchange information and combine resources in order to influence policy decisions that affect cities (membership of 478 cities).

Center for Creative Land Recycling – Stephanie Shakofsky (415) 398-1080: A non-profit organization focused on creating sustainable communities by identifying and implementing responsible patterns of land use and development in ways that revitalize urban areas and discourage urban sprawl.

California State Rural Health Association - Lauri A. Medeiros (916) 453-0780: A non-profit organization with the mission to preserve and enhance health in rural California with a commitment to assisting rural health professionals, consumers and others through education, events and community outreach.

California Community Economic Development Association - Ralph Lippman (213) 352-1676: This Association is a membership organization of nonprofit community-based organizations committed to systemic economic and social change in California's disadvantaged communities.

G. Reduction of Threats to Human Health and the Environment:

G. 1. Use of Funds to Protect Human Health/Environment: The CURB Coalition is requesting funds through the RLF Program in order to reduce the threat to public health and safety and the environment by assisting in the cleanup of brownfields sites and to making these sites available for reuse. With an estimated 100,000 brownfields in the State, there is a high demand for public assistance to cleanup sites and to protect public health and safety and the environment. Many parts of Los Angeles are highly contaminated with lead, petroleum hydrocarbons and chlorinated solvents from industrial and transportation uses. In the past year, the City of Los Angeles' Brownfield Program has performed site assessments on about 15 sites that had significant contamination. The plan is to redevelop these sites in the future, but there is limited access to cleanup funds and no viable responsible parties.

Lung cancer is the second most common type of cancer in California, with diesel exhaust and other cancer-causing airborne toxics being responsible for much of the overall cancer risk.¹ The Wilmington Area, because of proximity to sea ports and freeways, is especially impacted. Children, pregnant women, the elderly, and those with existing health problems, are the most vulnerable to the effects of air pollution, especially in urban areas or areas impacted by poor air quality. CURB will identify and remediate properties that have contaminated soils and deteriorated water quality caused by former manufacturing activities. These properties may increase health risks through exposure to air pollution including vapor intrusion. Under DTSC direction, sites will be remediated to a level that protects public health and the environment for the intended land use. CURB will give priority to projects that pose known exposure threats to humans and ecosystems.

G. 2. Working with State Authority to Protect Human Health/Environment: DTSC is the State regulatory agency responsible for the oversight of remediation activities at brownfields sites. Each selected brownfield project proponent will enter into a VCP agreement and be assigned an experienced project manager to provide technical oversight and ensure appropriate cleanup goals are established and met. Typical VCP oversight activities include performing site visits and facilitating meetings, public participation activities, coordinating and reviewing and approving sampling and quality assurance and quality control plans, reviewing cleanup plans, implementation plans, and operation and maintenance plans. Sites requiring institutional controls are required to record deed restrictions. Typically, redevelopment activities will be governed by the local zoning and building regulations through the appropriate city and county jurisdiction.

G. 3. Process/Capacity to Communicate Requirements: CURB will develop a manual for borrowers and subgrantees that outlines the program guidelines, eligibility criteria, and applicable requirements, including, adherence to federal, State and local laws for participating under the program. The guidance will be available to any interested person and available on DTSC's and CURB's websites.

H. Leveraging of Additional Resources:

H.1. RLF Management: DTSC and Coalition partners will assume responsibility for managing the grant, and they have staff resources to dedicate to performing the management tasks. DTSC will assume the role of overall project manager and the Coalition will share project management duties depending on

¹ California Environmental Protection Agency, Air Resources Board; Air Quality and Land Use Handbook: A Community Health Perspective, April 2005.

available resources and expertise. Currently, each Coalition partner has experienced staff performing grant management activities and can assume these additional tasks.

H.2. Committed Resources: Coalition partners will provide in-kind services in the form of staff time to establish, market, promote and manage the program. Financial resources in the form of tax increment financing and redevelopment funds and other grants will be used for projects within the target area.

H.3. Leveraging Funds: The City of Los Angeles and the Redevelopment Agency of the City and County of San Francisco currently have Cooperative Agreements with USEPA for various Assessment, Cleanup and Showcase Community and Job Training grants. The City of Los Angeles has received over \$80 million in grants and loans from the Economic Development Administration (EDA) and the US Department of Housing and Urban Development (HUD). Two of the HUD Brownfields Economic Development Initiative grants are in the Wilmington Port area and in the Chinatown area along the City's Metro Gold line. Additionally, over \$1.0 million in EDA funds has been designated for projects that enhance redevelopment along the City's existing transportation hubs, including the Alameda Corridor and the Wilmington Port areas.

A primary focus of the Redevelopment Agency of the City and County of San Francisco is providing funding to projects in the area of the redevelopment plan for the Bayview Hunters Point Area (anticipated for adoption in Spring 2006). In addition, the Agency will be evaluating projects that favor low-income or senior housing, and may be applying for Section 202 financing through the HUD's State/federal low-income housing tax credits and tax increment financing. The Los Angeles Brownfields Resource Team allocates approximately \$1,000,000 annually to provide for investigation, cleanup and technical advice on brownfields projects city-wide with a focus on the targeted areas for this RLF Program.

I. Programmatic Capability/Management Structure:

I. 1. Ability to Manage Grants: All CURB partners have expertise in managing grants and subgrants. The Loan Manager's experience includes developing policies and procedures, cash flow analysis and implementation of a State commercial loan program, in addition to private business and commercial lending experience. DTSC's Grant Administration Unit has extensive experience in managing federal funds, as well as the monitoring, tracking, reporting and coordination of federal grants. DTSC's Accounting Unit monitors the expenditure of State and federal funds, with the Business Services Unit overseeing contract development, implementation, and compliance. DTSC's Office of Legal Counsel is available to assist with legal issues related to grants awarded with federal funds.

I. 2. Federal Funds Management History: DTSC has more than 20 years of extensive experience managing over a dozen federal grants, totaling millions of dollars annually. DTSC manages several grants totaling \$23,368,359. The Site Mitigation and Brownfields Reuse Program manages seven federal grants, including four from USEPA with an annual budget of \$2,615,000; one from the Department of Defense with an annual budget of over \$12 million; and two from the Department of Energy totaling \$153,000. OMB Circular A-133 Audit findings have been positive with minor exceptions in the past, which have been resolved.

In 1999, the Office of Inspector General (OIG) conducted an audit on the Stringfellow Cooperative Agreement that involved recommendations on cost issues and administrative process, and required DTSC to make contract procurement improvements to ensure that prohibited forms of contracts are not utilized. In response, DTSC modified procedures and improved the process with significant changes to contracting policies and procedures. These improved processes have been applied to all DTSC federal grants. With respect to agency regulations implementing OMB Circular A-102, on July 22, 1994, USEPA designated DTSC as a "high risk" grantee and placed a "special condition" on all grants awarded to DTSC. On September 24, 2003, the Regional Dispute Decision Official issued DTSC the Final Determination Letter

removing the "high risk" designation (in accordance with 40 CFR Part 31, Subpart F) with DTSC accepting the decision on October 8, 2003.

I. 3. Reporting Compliance: In accordance with (40 CFR Section 31.40) grant terms and conditions, DTSC submits a summary report of the accomplishments/deliverables and a budget expenditure status report 30 days after the end of each of the third month of the quarter, as well as an annual report of the Minority/Women Owned Business Enterprise (MBE/WBE) effort. Also (40 CFR Section Part 31.23(b)), the annual financial status report (FSR) is submitted within 90 days after the end of the budget period.

I. 4. Amount of Brownfields Cooperative Agreement: DTSC received the State and Tribal Response Program Grant (CERCLA: Sec. 128(a)) funded at \$4,500,000. The estimated remaining balance of \$1,213,652, as of October 31, 2005, is to support the activities/projects/contracts through the end of the grant period--June 30, 2006. DTSC's Sacramento Regional Office has just been awarded a 2005 hazardous substances community-wide assessment grant for \$200,000. None of these monies have been spent as yet.

I. 5. Significant Accomplishments: DTSC's most significant accomplishments:

- Targeted Site Investigation Program--Site assessments of approximately 25 projects;
- Implementation of the California Land Reuse and Revitalization Act of 2004 (AB 389). This act provides qualified innocent landowners, bona fide purchasers or contiguous property owners with immunity from liability for certain hazardous materials response costs or other damages;
- Developed Specialized Oversight Agreement for cleanup oversight agreements with redevelopment agencies;
- Developed a Memorandum of Agreement between State regulatory agencies outlining roles to foster greater cooperation and communication;
- Developed research and guidance documents on various emerging issues including naturally occurring asbestos, indoor air/vapor intrusion, and safe school development;
- Developed brownfields outreach materials, success stories, fact sheets, and conducted workshops.

The City of Los Angeles is currently a USEPA National Brownfields Showcase Community and recipient of a USEPA Cooperative Agreement. The City has consistently submitted required reports and managed funds effectively. The remaining balance in the current Showcase Cooperative Agreement is \$24,620.50. The City also has a Cooperative Agreement for a Job Training and Petroleum Assessment Grant. Since the inception of the City's Brownfields Program, over 100 sites have been identified and evaluated for development potential with a significant number of assessments started and/or completed. The program has obtained approximately \$86 million in HUD Brownfields Economic Development Initiative (BEDI) Grants, Section 108 loan guarantees, EDA, and other funds. The City has also conducted brownfields training for its staff and has resolved brownfields barriers on various other City projects. For the past seven years, the City Council and Mayor have expended approximately \$1.0 million annually to support the Brownfields Program. The City was recently awarded its eighth award bringing the total grant amount to \$11.2 million and the Section 108 Loan to \$73.5 million.

Over the past ten years, the Redevelopment Agency of the City and County of San Francisco has received federal grants from the USEPA Brownfields Program, the Department of Defense and the Economic Development Administration to undertake the redevelopment of the Hunters Point Shipyard. The Agency has not received adverse audit findings regarding these federal grants, nor has it been required to comply with special "high risk" terms and conditions pursuant to OMB Circular A-102.

APPENDICES

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CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION IN CONFORMITY WITH SECTION 34 OF THE COMMUNITY REDEVELOPMENT ACT OF CALIFORNIA, DECLARING THE NEED FOR A REDEVELOPMENT AGENCY, TO BE KNOWN AS THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, TO FUNCTION IN SAID CITY AND COUNTY.

Resolution No. 7779
(Series of 1939)

WHEREAS, There now exist in the City and County San Francisco large areas of land which constitute blighted areas as defined in Section 2 of the Community Redevelopment Act of California, which areas are either social or economic liabilities, or both, requiring redevelopment in the interest of the health, safety and general welfare of the people of said City and County and of said State generally, as set forth in said Act, and

WHEREAS, The Board of Supervisors of said City and County enacted Ordinance No. 5082 (Series of 1939) approved by the Mayor on August 3, 1948, and now in full force and effect, designating as such a blighted area a certain area therein described, within the City and County of San Francisco, and

WHEREAS, The redevelopment of such blighted areas cannot be accomplished by private enterprise alone, without public participation and assistance in the acquisition of land, in planning and in the financing of land assembly, in the work of clearance and in the making of improvements necessary therefor, as stated more fully in said Act, and

WHEREAS, To accomplish such redevelopment there is a present and urgent need for a redevelopment agency to function as set forth in Section 34 of said Act, and

WHEREAS, The City and County of San Francisco has complied with the requirements of Section 4 of said Act, now, therefore be it

RESOLVED, That there is need for a redevelopment agency, to be known as the Redevelopment Agency of the City and County of San Francisco, to function in such City and County under the provisions of said Act, and be it further,

RESOLVED, That such an agency be created and constituted at the time and in the manner prescribed by Article 7 of said Act.

Adopted -- Board of Supervisors, San Francisco, August 9, 1948.

Ayes: Supervisors Christopher, Fazackerly, Gallagher, Halley, Lewis, MacPhee, Mancuso, McMurray, Mead, J. Joseph Sullivan, John J. Sullivan.

I hereby certify that the foregoing resolution was adopted by the Board of Supervisors of the City and County of San Francisco.

JOHN R. McGRATH.
Clerk

Approved, August 10, 1948.

ELMER B. ROBINSON,
Mayor

Aug 13-lt



ANTONIO R. VILLARAIGOSA
MAYOR

December 13, 2005

Ms. Carolyn Douglas
Brownfields Program Manager, Region 9
U.S. Environmental Protection Agency
75 Hawthorne St., SFD 1-1
San Francisco, CA 94105

RE: United States Environmental Protection Agency (U.S. EPA)
National Brownfields Revolving Loan Fund Grant

Dear Ms. Douglas:

The City of Los Angeles is pleased to be a partner acting in cooperation with the California Department of Toxic Substances Control and the City of San Francisco in submitting a proposal for a U.S. EPA National Brownfields Revolving Loan Fund Grant.

The Revolving Loan Fund will be used to fund cleanups anywhere in Los Angeles, but with a focus on areas with blight and environmental justice concerns that also have planned or in-progress projects. The City is currently working on several mixed use development projects on land with contamination issues, including several sites in our central city core and surrounding inner-city neighborhoods. Another area of focus is former oil wells that have contaminated neighborhoods in Los Angeles. The area around Rockwood Park (which has received a Brownfields Assessment Grant) and the Wilmington Area have suffered from past and current oil well operations. The Revolving Loan Fund will make it possible to remediate and redevelop all of these stricken areas.

The U.S. EPA's Brownfields Grant Program continues to play a critical role in supporting the City of Los Angeles' goal to establish partnerships that lead to the revitalization of its environmentally challenged communities. Likewise, the City of Los Angeles is proud to contribute to the EPA's goal of "achieving environmental improvement at all public and private levels." Considering our long-standing mutual goals, we look forward to your favorable consideration of this application for the Revolving Loan Fund Grant.

Ms. Carolyn Douglas
December 13, 2005
Page 2

If you have any questions please feel free to contact the Environmental Affairs
Department, Wayne Tsuda, Chair of the Brownfields Resource Team (213-978-3068).

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Villaraigosa', written over the word 'Sincerely,'.

ANTONIO R. VILLARAIGOSA
Mayor

San Francisco
Redevelopment Agency

770 Golden Gate Avenue
San Francisco, CA 94102

415.749.2400
TTY 415.749.2500



APPENDIX C

GAVIN NEWSOM, Mayor

Richard H. Peterson, Jr., President
London Breed, Vice President
Frances Covington
Leroy King
Ramon E. Romero
Darshan Singh
Bonny Y. Yee

Marcia Rosen, Executive Director

108-18005-021

December 6, 2005

U.S. MAIL

Dorothy Rice, Deputy Director
Brownfields Reuse Program
Department of Toxic Substances Control
1001 "I" Street
Sacramento, CA 95812-0806

**Re: Proposal for the U.S. Environmental Protection Agency's ("USEPA") Brownfields
Revolving Loan Fund Grant**

Dear Ms. Rice:

The Redevelopment Agency of the City and County of San Francisco (the "Agency") is pleased to accept your invitation to join the California Department of Toxic Substances Control ("DTSC") as a partner in the California Urban Reuse for Brownfields ("CURB"). The Agency believes that our joint grant application to establish a Brownfields Revolving Loan Fund for the cleanup of sites throughout the State of California can jumpstart the Agency's planned redevelopment work in the local target areas.

The Agency is dedicated to improving the environment of the City and County of San Francisco and creating better urban living conditions through the removal of blight. Participation in CURB will assist in the development and revitalization of San Francisco's Bayview Hunters Point community. Due to the history and continued prevalence of industrial uses in Bayview Hunters Point, environmental pollution and brownfields are significant problems in the area. Furthermore, many of the industrial areas are adjacent to residential neighborhoods, creating conflicts between industrial and residential uses. A key economic and environmental revitalization strategy is the remediation of brownfield sites throughout this community. As a CURB partner, the Agency will make grants and loans available for the cleanup of brownfield sites in the Bayview Hunters Point community.

USEPA's financial assistance and involvement in the cleanup of brownfield sites will help ensure the economic and environmental revitalization of communities in need. We look forward to a future partnership with DTSC and the City of Los Angeles to help communities across the State of California to achieve their economic and environmental revitalization goals.

Sincerely,

Marcia Rosen,
Executive Director

Cc: Megan Cambridge, DTSC Statewide Brownfields Coordinator (via-email)



California Environmental Protection Agency

Air Resources Board • Department of Pesticide Regulation • Department of Toxic Substances Control
Integrated Waste Management Board • Office of Environmental Health Hazard Assessment
State Water Resources Control Board • Regional Water Quality Control Boards



Jan C. Lloyd, Ph.D.
Agency Secretary

Arnold Schwarzenegger
Governor

December 12, 2005

Mr. Don West
Environmental Management Support Inc.
8601 Georgia Avenue, Suite 500
Silver Springs, MD 20910

Dear Mr. West:

I am writing to offer my full support for the Department of Toxic Substances Control's (DTSC) application for a brownfields grant from the U.S. Environmental Protection Agency (U.S. EPA). DTSC, in a coalition with the Cities of Los Angeles and San Francisco, is applying for a grant of \$3.0 million to create a revolving loan fund. The revolving loan fund will promote timely cleanups of properties contaminated with hazardous substances and petroleum waste in those communities and throughout the state.

I encourage and applaud the efforts of DTSC in promoting the cleanup and revitalization of brownfields through partnerships with our local governments, and providing assistance to communities in identifying, characterizing and cleaning up brownfields. The emergence and fostering of partnerships between DTSC and California's local governments and redevelopment agencies demonstrate a fundamental commitment to revitalizing our communities and strengthening local economies. Cleaning up and redeveloping California's brownfields is one of the key environmental priorities of the Governor and of the California Environmental Protection Agency.

The grant funds, if awarded, will provide DTSC with resources to tangibly assist California's communities in addressing more brownfields sites. These funds will, in turn, leverage additional private and local government investment and facilitate additional brownfields cleanup and development to these communities. I urge you to award this grant to DTSC and its local government partners. I appreciate the opportunity to voice my support for this crucial project. If you have any questions, please do not hesitate to contact me at (916) 445-3131

Sincerely,

Rick Brausch
Assistant Secretary for External Affairs

cc: See next page

Mr. West
December 12, 2005
Page 2

cc: Mr. Leonard Robinson
Acting Director
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Ms. Dorothy Rice
Deputy Director
Site Mitigation and Brownfields Reuse Program
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Ms. Carolyn Douglas
Brownfields Team Leader
U.S. Environmental Protection Agency
Region 9 - SFD-5
75 Hawthorne Street
San Francisco, CA 94105-3901



Alan C. Lloyd, Ph.D.
Agency Secretary
Cal/EPA



Department of Toxic Substances Control

1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806

APPENDIX E



Arnold Schwarzenegger
Governor

MEMORANDUM

TO: Dorothy Rice
Deputy Director
Site Mitigation and Brownfields Reuse Program

FROM: Steve Koyasako *Steve Koyasako*
Assistant Chief Counsel
Office of Legal Counsel and Investigations

DATE: December 13, 2005

SUBJECT: Legal Authority Regarding Authority of the Department of Toxic Substances Control to Access and Secure Brownfields Revolving Loan Fund Sites

Background

The Department of Toxic Substances Control (hereafter DTSC), on behalf of itself and a coalition of local government entities, is applying for a revolving loan fund (hereafter RLF) grant available through the United States Environmental Protection Agency (hereafter U.S. EPA) Brownfields Legislation.¹ This RLF grant provides funding for a grant recipient, such as DTSC, to capitalize a revolving loan fund and to provide subgrants to carry out cleanup activities at brownfield sites.² Generally, RLF grants are used to "provide no-interest or low-interest loans for brownfields cleanups."³ Cleanups under the program will be overseen by the state response program⁴ administered by DTSC.

DTSC proposes to develop a statewide revolving fund program, form a coalition with urban cities to capitalize the RLF and provide subgrants to carry out cleanup activities at brownfields sites in California. Projects participating under the RLF

¹ See Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") § 104(k) (42 U.S.C. § 9604(k)).

² U.S. Environmental Protection Agency, Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants (October 2005), p. 9 (hereafter Proposal Guidelines).

³ *Id.* at p.10.

⁴ See 42 U.S.C. § 9628.

will be required to participate under the oversight of the State's Voluntary Cleanup Program within DTSC's Site Mitigation and Brownfields Reuse Program. As part of its grant application, the Proposal Guidelines require that DTSC provide a legal opinion on the following issues:

E.2. Cleanup Authority and Oversight Structure

Provide a legal opinion from your counsel that demonstrates that you have legal authority to access and secure sites in the event of an emergency or default of a loan agreement or non-performance under a subgrant. *Attach your counsel's legal opinion.*

Note: For coalitions, the applicant must have the broader jurisdiction, authority and program capacity to ensure adequate program performance of coalition members, borrowers, and/or subgrantees, if warranted.⁵

Questions Presented

1. Does DTSC have the legal authority to access and secure sites in the event of an emergency, default of a loan agreement, and/or non-performance under a subgrant?
2. Does DTSC have the broader jurisdiction, authority and program capacity to ensure adequate program performance of coalition members, borrowers, and/or subgrantees, if warranted ?

Short Answers

1. Yes, DTSC has the legal authority to access and secure sites in the event of an emergency, default of a loan agreement, and/or non-performance under a subgrant.
2. DTSC has the broader jurisdiction, authority and program capacity to ensure adequate program performance of coalition members, borrowers, and/or subgrantees, if warranted.

⁵ Proposal Guidelines, *supra*, at p. 32

Analysis 1

DTSC has the legal authority to access and secure sites in the event of an emergency, default of a loan agreement, and/or non-performance under a subgrant.

DTSC has broad authority to commence and maintain all proper and necessary actions and proceedings to enjoin and abate nuisances related to matters within its jurisdiction which are dangerous to health; to compel the performance of any act specifically enjoined upon any person, officer or board, by any law of this state relating to matter within its jurisdiction; and to protect and preserve the public health.⁶ DTSC has express authority to "abate public nuisances related to matters within its jurisdiction."⁷ DTSC's statewide jurisdiction is specified by statute and regulation, and the scope those nuisances that may be abated by DTSC because they are "related to matters within" that jurisdiction is broad. Such nuisances could include, for example, those related to hazardous and nonhazardous wastes, hazardous substances and hazardous materials that affect public health, safety or the environment. This authority includes actual, threatened and potential exposures.

DTSC has a variety of authorities to access sites in the event of an emergency, default of a loan agreement, or non-performance under a subgrant. For example, DTSC or a person designated by DTSC may enter certain properties at reasonable times in order to determine the need for a response action, choosing or taking a response action, or for the purpose of enforcing the Carpenter-Presley-Tanner Hazardous Substances Account Act, chapter 6.8 (commencing with section 25300), division 20 of the Health and Safety Code (hereafter Chapter 6.8).⁸ If consent is denied, DTSC or the designee must obtain an inspection warrant unless there is an emergency posing an immediate threat to public health or safety. DTSC, and any person authorized by DTSC to enter upon any lands for the purpose of taking removal or remedial action under chapter 6.8, shall not be held liable in either a civil or criminal proceeding, for trespass or for any other acts which are necessary to carry out the corrective action.⁹

Like CERCLA, Chapter 6.8 authorizes a comprehensive program to provide for

⁶ Health & Saf. Code § 58009, as added by Gov.Reorg.Plan No. 1 of 1991, § 146, eff. July 17, 1991.

⁷ Health & Saf. Code § 58010, as added by Gov.Reorg.Plan No. 1 of 1991, § 146, eff. July 17, 1991.

⁸ Health & Saf. Code § 25358.1.

⁹ *Ibid.*

response authority and cleanup of releases of hazardous substances, and to compensate parties injured by the release of hazardous substances, while imposing strict liability on "responsible parties" (owners, operators, arrangers and transporters) for the cleanup of the contamination. Chapter 6.8 gives DTSC enforcement authority similar to the authority of the U.S. EPA under CERCLA. Similarly, Chapter 6.8 requires DTSC to publish and revise, at least annually, a priority list of sites "selected for, and subject to, a response action under [Chapter 6.8]."¹⁰ This "State Superfund List" is roughly analogous to, and serves a function similar to, the National Priorities List promulgated by the U.S. EPA under CERCLA.¹¹

Chapter 6.5 (commencing with section 25100), division 20 of the Health and Safety Code (hereafter Chapter 6.5) is California's state program implemented in lieu of the federal hazardous waste program under the Resource Conservation and Recovery Act of 1976 (RCRA).¹² RCRA requires authorized state programs to implement a program of corrective action for releases of hazardous waste or constituents from any solid waste management unit at a hazardous waste facility, regardless of when the waste was placed in the unit.¹³ Such a hazardous waste facility corrective action program is incorporated in state law at Health and Safety Code sections 25187, 25200.3, 25220.10, 25200.14, and 25404.1.

Under Chapter 6.5, authorized representative of DTSC or an authorized local agency may enter and inspect various hazardous waste management facilities at any reasonable hour, or as authorized pursuant to an inspection warrant.¹⁴ DTSC or its authorized representatives may also, at any reasonable time, enter and inspect any real property which is within 2,000 feet of a deposit of hazardous waste, or a hazardous waste property, in order to carry out the purposes of the hazardous waste disposal land law.¹⁵

The scope of DTSC's authority under Chapter 6.5 is very extensive, and provides authority to regulate brownfield sites. Cleanups under Chapter 6.5 do not require DTSC to establish that there has been a release of a listed or characteristic hazardous waste. Rather, DTSC only has to establish that there has been a release of a hazardous waste *or constituent* (specified in Appendix VIII or Appendix X to chapter 11 (commencing with section 66261.1), division 4.5, title 22, California Code of Regulations), from a "*hazardous waste facility*".¹⁶ There are some differences between the substances that may be addressed under

¹⁰ Health & Saf. Code § 25356, subd. (b)(1).

¹¹ See 42 U.S.C. § 9605(a)(1)(8)(B).

¹² 42 U.S.C. § 6901 et seq.

¹³ 42 U.S.C. § 6924(u).

¹⁴ Health & Saf. Code § 25185.

¹⁵ Health & Saf. Code § 25185.5

¹⁶ See Health & Saf. Code § 25187, subd. (b).

Chapter 6.5 and Chapter 6.8: for example, the Chapter 6.8 definition of “hazardous substances” encompasses some materials, such as radionuclides, which are not a “solid waste” under RCRA or a “waste” under Chapter 6.5; on the other hand, petroleum, which is excluded from the definition of “hazardous substances” under Chapter 6.8, is subject to corrective action under Chapter 6.5.

The definition of a “hazardous waste facility” that is subject to a corrective action order under Health and Safety Code section 25187 is broad, and is clearly not limited to those facilities that are required to obtain a permit or other form of authorization from DTSC. Section 25187, subdivision (b)(6) provides: “For purposes of this subdivision, ‘hazardous waste facility’ includes the entire site that is under the control of an owner or operator engaged in the management¹⁷ of hazardous waste.” Subdivision (b)(1) of that section distinguishes hazardous waste facilities that are required to obtain a permit or other form of authorization from DTSC from other hazardous waste facilities that are subject to a corrective action order under subdivision (b) of section 25187. Subdivision (b)(1) provides:

In the case of a release of hazardous waste or constituents into the environment from a hazardous waste facility that is required to obtain a permit pursuant to Article 9 (commencing with Section 25200), the department shall pursue the remedies available under this chapter, including the issuance of an order for corrective action pursuant to this section, before using the legal remedies available pursuant to Chapter 6.8 (commencing with Section 25300), except in any of the following circumstances:

. . .

This distinction between facilities that are and are not required to obtain permits or other forms of authorization would be superfluous if DTSC’s corrective action authority under Health and Safety Code section 25187, subdivision (b)(1), were limited only to the former. We conclude, therefore, that DTSC may use its Chapter 6.5 authorities to secure, and to oversee, cleanups at any sites where the owner or operator is engaged in the “management” of hazardous waste within the meaning of Health and Safety Code section 25187, subdivision (b)(6).

With regard to site security, if there has been a release of a hazardous substance on a site that poses a public health risk because of the likelihood of human or domestic animal contact, DTSC or a county health officer is required to order the property owner to, within five days after receiving notification of the order, secure the site with fencing and post warning signs. If the property owner fails to comply with such order, the owner is subject to civil penalties, and DTSC or the county

¹⁷ Health and Safety Code section 25117.2 defines the terms “hazardous waste management” and “management” as “the transportation, transfer, recycling, recovery, disposal, handling, processing, storage, and treatment of hazardous waste.”

health officer shall secure and post the site within 30 days after expiration of the five-day compliance period.¹⁸

Whenever the director of DTSC determines that there may be an imminent or substantial endangerment, because of a release or threatened release of a hazardous substance, the director may take or contract for any necessary removal or remedial action (which may include site security), and may request the Attorney General to secure such relief as may be necessary from the responsible parties to abate the danger or threat.¹⁹

Finally, as part of the loan approval process, DTSC is required to obtain a security interest in each property associated with the state RLF loan.²⁰ This security interest allows DTSC to initiate foreclosure proceedings on those sites.²¹ Furthermore, in determining what actions are necessary to enforce its security interest at such sites, DTSC has been granted considerable autonomy and discretion.²²

Analysis 2

DTSC has statewide jurisdiction, authority, and program capacity to ensure adequate program performance by coalition members, borrowers, and subgrantees. As discussed previously, DTSC is authorized by state law to oversee hazardous material cleanups, and has a variety of enforcement tools to ensure that cleanups are protective of human health and the environment. Furthermore, appropriate conditions may be included in loan agreements, oversight agreements, or subgrants, as may be necessary to secure appropriate performance by borrowers and subgrantees.

Conditions to assure adequate program performance under loan agreements, oversight agreements, and subgrants may be enforced in a civil action by DTSC.

¹⁸ Health & Saf. Code § 25359.5.

¹⁹ Health & Saf. Code § 25358.3; this authority may also be exercised by the director's designees.

²⁰ A loan approved pursuant to Health and Safety Code section 25395.23 shall be secured by the property subject to the release or threatened release of the hazardous material on which the response action will be taken or by another form of security that DTSC determines will adequately protect the state's interest. DTSC shall obtain an appropriate security interest in the property or other alternative form of security approved by DTSC. (Health & Saf. Code § 25395.26, subd. (a).)

²¹ DTSC may foreclose on property which is the subject of a loan, or on any alternative form of security approved by DTSC. Any funds received through a foreclosure or through the enforcement of any other security interest shall be deposited in the Account. (22 Cal. Code Regs. § 68210, subd. (c).)

²² "Notwithstanding any other provision of law, no approval or review shall be required from the Department of General Services [for DTSC] to obtain any security interest or exercise any rights, including, but not limited to, foreclosure, under any security interest or other agreement made pursuant to this article." (Health & Saf. Code § 25395.26, subd. (d)(1).)

As discussed above, DTSC has statutory authority to commence and maintain all proper and necessary actions and proceedings "[t]o compel the performance of any act specifically enjoined upon any person, officer or board, by any law of this state relating to matter within its jurisdiction."²³ In addition, of course, DTSC retains the full panoply of enforcement and response authorities under Chapters 6.5 and 6.8; and DTSC may utilize those authorities as necessary to ensure that cleanups and other actions by coalition members or subgrantees are protective of human health and the environment.

Conclusion

In conclusion, DTSC could secure sites for a variety of reasons, including, but not limited to, emergencies, default of a loan agreement, and non-performance under subgrants. In our opinion, DTSC also has the legal authority to ensure program performance of coalition members, and/or subgrantees, if warranted.

²³ Health & Saf. Code § 58009, as added by Gov.Reorg.Plan No. 1 of 1991, § 146, eff. July 17, 1991.



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APPENDIX F



Arnold Schwarzenegger
Governor

MEMORANDUM

TO: Dorothy Rice
Deputy Director
Site Mitigation and Brownfields Reuse Program

FROM: Steve Koyasako *Steve Koyasako*
Assistant Chief Counsel
Office of Legal Counsel and Investigations

DATE: December 13, 2005

SUBJECT: Legal Opinion Regarding Authority of the Department of Toxic
Substances Control to Manage a Revolving Loan Fund

Background

The Department of Toxic Substances Control (hereafter DTSC), on behalf of itself and a coalition of local government entities, is applying for a revolving loan fund ("RLF") grant available through the United States Environmental Protection Agency ("U.S. EPA") Brownfields Legislation.¹ This RLF grant provides funding for a grant recipient, such as DTSC, to capitalize a revolving loan fund and to provide subgrants to carry out cleanup activities at brownfield sites.² Generally, RLF grants are used to "provide no-interest or low-interest loans for brownfields cleanups."³ Cleanups under the program will be overseen by the state response program⁴ administered by DTSC.

DTSC proposes to develop a statewide revolving fund program, form a coalition with urban cities to capitalize the RLF and provide subgrants to carry out cleanup activities at brownfields sites in California. Projects participating under the RLF will be required to participate under the oversight of the State's Voluntary

¹ See Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") § 104(k) (42 U.S.C. § 9404(k)).

² U.S. Environmental Protection Agency, Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants (October 2005), p. 9 (hereafter Proposal Guidelines).

³ *Id.* at p.10.

⁴ See 42 U.S.C. § 9628.

Cleanup Program within DTSC's Site Mitigation and Brownfields Reuse Program. As part of its grant application, the Proposal Guidelines require that DTSC provide a legal opinion on the following issue:

G. Legal Authority to Manage a Revolving Loan Fund

Provide an opinion from your legal counsel that demonstrates your legal authority to perform the actions necessary to manage a revolving loan fund. At a minimum, legal authority must include the ability to hold funds, make loans, enter into loan agreements, and collect repayments. This authority may be based on statute, regulation, or other authority. *Applicant must attach a legal opinion.*⁵

Questions Presented

Does DTSC have the legal authority to perform the actions necessary to manage a RLF? Specifically:

Does DTSC have the legal authority to:

- (a) Hold funds;
- (b) Make loans;
- (c) Enter into loan agreements; and
- (d) Collect payments?

Short Answer

Yes, DTSC has the legal authority to perform the above-referenced actions necessary to manage a RLF. Legal authority rests in Health & Safety Code sections 25395.20-25395.32, as well as the Budget Act of 2005.⁶ California Code of Regulations, title 22, sections 68200-68214, further clarifies DTSC's authority to manage a RLF fund.

⁵ Proposal Guidelines, *supra*, at p. 33.

⁶ Stats. 2005, ch. 38).

Analysis

DTSC has the legal authority to perform the actions necessary to manage a RLF.

The state legislature has granted DTSC the legal authority to manage a RLF program.⁷ DTSC has since established a set of regulations to manage a RLF.⁸ DTSC has been designated the administering agency for both the ISCP and CLEAN programs⁹ and loan operations for a RLF.¹⁰ The state's goal, in procuring a federal RLF grant, is to "finance the performance of actions necessary to respond to the release or threatened release of a Hazardous Material on a Brownfield¹¹ or Eligible Underutilized Property."¹² In order to implement a RLF grant, the state has made available two loan programs as part of the state RLF. These two available loan programs are the Investigating Site Contamination Program ("ISCP")¹³ and the Cleanup Loans and Environmental Assistance to Neighborhoods ("CLEAN")¹⁴ program.¹⁵

Further, DTSC has general statutory authority to "carry out all hazardous waste management responsibilities imposed or authorized by the federal act [the Resource Conservation and Recovery Act], and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.

⁷ See Health & Saf. Code §§ 25390.20-25395.32.

⁸ See 22 Cal. Code Regs. §§ 68200-68214.

⁹ DTSC is the Administering Agency for all properties that are the subject of an ISCP Loan. (22 Cal. Code Regs. § 68201, subd. (a).) An applicant for a loan may not request that a different agency be designated as the Administering Agency by the Site Designation Committee created by section 25260 of the Health and Safety Code. (22 Cal. Code Regs. § 68201, subd. (c).) For an application for a CLEAN Loan Program Loan for a property that is subject to a release from a leaking underground fuel tank and the release is the principal threat at that property as determined by DTSC, the State Water Resources Control Board and the CRWQCB, DTSC will be the Administering Agency. (22 Cal. Code Regs. § 68207, subd. (a)(2).)

¹⁰ Conditions of the loan, loan processes, repayment, and loan closing functions are governed and administered by DTSC. (22 Cal. Code of Regs. § 68213.)

¹¹ See 22 Cal. Code Regs. § 68200.

¹² "Eligible property" is defined as a site that is any of the following: (A) a brownfield; or (B) an underutilized property. (22 Cal. Code Regs. § 68202, subd. (o).)

¹³ The department, with the approval of the Secretary for Environmental Protection (Secretary), shall establish an ISCP to provide loans to eligible persons to conduct preliminary endangerment assessments of brownfields and underutilized properties. (Health & Saf. Code § 25395.21, subd. (a).)

¹⁴ DTSC, with the approval of the Secretary, shall establish a CLEAN Program to provide loans to finance the performance of any action necessary to respond to the release or threatened release of hazardous material at an eligible property. (Health & Saf. Code § 25395.22, subd. (a).)

¹⁵ In order for an applicant to qualify for a CLEAN loan, the application must include documentation of, *inter alia*, a preliminary endangerment assessment that is either DTSC-approved or one with equivalent information (See Health & Saf. Code § 25395.22, subd. (b)(1)). This preliminary endangerment assessment may arise out of ISCP loan program, which provides loans for such assessments. (See fn. 11, *supra*.)

Sec. 9601 et seq.) (CERCLA), including any subsequent amendments of these federal acts, and any regulations adopted pursuant to these federal acts.”¹⁶ This language further evidences the Legislature’s intent that DTSC utilize its existing statutory authority in a manner so as to meet the requirements of any federal grant requirements that may be required by CERCLA.

Finally, the Budget Act of 2005 specifically provides: “Upon receipt of the federal Revolving Fund Grant, the Department of Toxic Substances Control is authorized to make loans and grants as authorized under the federal regulations and in accordance with all applicable federal laws and guidelines.”¹⁷ This legislative authorization evidences the legislature’s intent that DTSC apply for and implement the federal RLF program, and the legislature’s belief that DTSC has adequate statutory authority to implement the program in full compliance with U.S. EPA program guidelines. That authority is discussed in more detail below.

(a) DTSC has the legal authority to hold funds.

DTSC has general authority to accept gifts, and other grants of money from public agencies like the federal government.¹⁸ Furthermore, the Carpenter-Presley-Tanner Hazardous Substances Account Act, chapter 6.8 (commencing with section 25300), division 20 of the Health and Safety Code (hereafter Chapter 6.8) specifically authorizes DTSC to receive and hold funds received from the federal government under CERCLA:

25173.6. (a) There is in the General Fund the Toxic Substances Control Account, which shall be administered by the director. In addition to any other money that may be appropriated by the Legislature to the Toxic Substances Control Account, all of the following shall be deposited in the account:

...

(8) Any money received from the federal government pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et seq.).

¹⁶ Health & Saf. Code § 25159.7.

¹⁷ Budget Act of 2005, stats. 2005, ch. 38, § 2.00, item No. 3960-001-0890; See also Health & Saf. Code §§ 25390.20-25395.32.

¹⁸ Health & Saf. Code § 58016, as added by Gov.Reorg.Plan No. 1 of 1991, § 146, eff. July 17, 1991.

Under Health and Safety Code section 25395.20(b), DTSC has the specific legal authority to hold all funds associated with the state RLF.¹⁹ Furthermore, DTSC has the discretion to expend any of the funds associated with the RLF.²⁰ The specific authorization in the current Budget Act provides that federal RLF money received from the Federal Trust Fund is to be deposited in the Hazardous Waste Control Account established by Health and Safety Code section 25174.²¹ In order for federal grant funds to be deposited in the Cleanup Loans and Environmental Assistance to Neighborhoods Account (Account), legislation, either the Budget Act or special legislation, must be passed providing authority for the state to transfer funds from the Federal Trust Fund to the Account. In order to more effectively implement the RLF program, DTSC intends to obtain additional Budget Act or statutory authorization to make any fund transfers that may be required to implement the RLF program.

(b) DTSC has the legal authority to make loans.

Under Health and Safety Code sections 25395.21(b) and 25395.22(b), DTSC has the legal authority to make loans under the state RLF (ISCP and CLEAN loans, respectively).²² Additionally, DTSC has the authority to determine eligibility for a loan²³ and approve any loan from the RLF.²⁴

¹⁹ "The Cleanup Loans and Environmental Assistance to Neighborhoods Account is hereby established in the General Fund to provide low-interest loans to qualified applicants for the purpose of funding preliminary endangerment assessments and response actions at brownfields and underutilized properties located in the state pursuant to this article All of the following moneys shall be deposited in the account:

- (1) Funds appropriated by the Legislature for the purposes of this article.
- (2) Notwithstanding Section 16475 of the Government Code, any interest earned upon money deposited into the account.
- (3) Proceeds from loan repayments.
- (4) Proceeds from the sale of property pursuant to this article that is the subject of foreclosure or its equivalent, as defined in subdivision (f) of Section 25548.1, and proceeds from the enforcement of any other security interest."

(Health & Saf. Code § 25395.20, subd. (b).)

²⁰ The money in the account (fn. 17, *supra*) may be expended by DTSC. (Health & Saf. Code § 25395.20, subd. (c)(2).)

²¹ Budget Act of 2005, *supra*, stats. 2005, ch. 38, § 2.00, item No. 3960-001-0890.

²² For both the ISCP and CLEAN programs, DTSC "shall develop a loan application form for an ISCP/CLEAN program loan and shall include, in the form, any provisions that DTSC considers to be appropriate." (Health & Saf. Code §§ 25395.21, subd. (b) and 25395.22, subd. (b), respectively.)

²³ Upon receipt of an application, DTSC will review the application for completeness and eligibility. Upon receipt of an application, DTSC will determine whether the application is complete, whether the applicant is an eligible applicant, and whether the property is an eligible property.

(22 Cal. Code Regs. § 68206, subd. (b).)

²⁴ DTSC, after consultation with the Secretary, the Secretary of Business, Transportation and Housing, and the Director of the Office of Planning and Research, may approve loan applications

(c) DTSC has the legal authority to enter into loan agreements.

Under California Code of Regulations, title 22, section 68209, subdivision (b), DTSC has the legal authority to enter into agreements involving state RLF loans.²⁵ DTSC also has general authority to enter into contracts and agreements, apply for and receive grants, and award grants for any of the following: studies, demonstrations of innovative methods, evaluations of existing projects, provision of training programs, and dissemination of information.²⁶ The use of a revolving loan fund for brownfields reuse, as contemplated in DTSC's application, would qualify as a "demonstration of innovative methods" for purposes of that statute.

(d) DTSC has the legal authority to collect payments.

DTSC has general authority to recover costs incurred by DTSC pursuant to chapter 6.8 (commencing with section 25300), division 20 of the Health and Safety Code (chapter 6.8), including interest thereon.²⁷ RLF loan payments are response costs incurred pursuant to chapter 6.8, and are therefore recoverable from the liable person or persons under both state and federal law.

A grant recipient of a RLF loan may not use grant monies to pay for the following:

- (1) A penalty or fine.
- (2) A federal cost-share requirement (for example, a cost share required by other federal funds).
- (3) An administrative cost.
- (4) A response cost at a brownfield site for which the recipient of the grant or loan is potentially liable under CERCLA §107.
- (5) A cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup.
- (6) Unallowable costs (e.g., lobbying and fund raising) under OMB Circulars A-21, A-87, or A-122, as applicable.²⁸

submitted pursuant to section Health and Safety Code section 25395.22. DTSC may approve a loan only for those response actions necessary to address a release or threatened release of a hazardous material at an eligible property. (Health & Saf. Code § 25395.23, subd. (a).)

²⁵ Upon final approval, DTSC and the applicant shall enter into a loan agreement meeting the requirements of California Code of Regulations, title 22, section 68210. The amount of funds disbursed and the schedule for disbursement shall be specified in the loan agreement. Loan funds shall not be disbursed until a loan agreement with DTSC is executed in accordance with section 68210, and the appropriate oversight agreement with the Administering Agency is executed. (22 Cal. Code Regs. § 68209, subd. (b).)

²⁶ Health & Saf. Code § 58017, as added by Gov. Reorg. Plan No. 1 of 1991, § 146.

²⁷ Health & Saf. Code § 25360.

²⁸ See Proposal Guidelines, *supra*, Appendix 2, "Prohibitions on Use of Funds".

The CLEAN loan program has several restrictions on the use of RLF grant funds. RLF grant funds cannot be funneled through the CLEAN loan program to pay for "the department's oversight of actions necessary to respond to the release or threatened release of hazardous material at an eligible property, or any operation and maintenance activity at a site."²⁹ Neither of these two CLEAN loan program restrictions conflict with the RLF prohibitions on the use of grant funds. Any unforeseeable conflicts between the CLEAN loan program's restrictions and the RLF program's requirements can be reconciled using the catch-all provision in the CLEAN program's loan application,³⁰ or through the promulgation of additional regulations prior to the effective date of the federal RLF grant award.³¹

Moreover, DTSC is in the process of seeking additional statutory authority on an urgency basis that will simplify fund accounting, and the fund transfers discussed at page 5, *infra*. This additional statutory authorization, which we anticipate will become effective at the same time as the State Budget Act for the 2006-2007 fiscal year, will augment DTSC's existing loan authority. DTSC desires this additional legislation in order to provide additional flexibility to implement the federal RLF program, independently from the existing CLEAN loan program.

Conclusion

In our opinion, DTSC has the legal authority to perform the actions necessary to manage a RLF. DTSC is permitted to hold funds, make loans, enter into loan agreements, and collect payments. DTSC intends to obtain additional statutory authorization in order to augment its existing authorities prior to the effective date of the federal grant award.

²⁹ See Health & Saf. Code § 25395.22, subd. (a).

³⁰ The CLEAN application shall be signed by the loan applicant and shall be accompanied by any other information that DTSC deems necessary. (Health & Saf. Code § 25395.23, subd. (b)(6).)

³¹ Health & Saf. Code § 25395.29.

APPENDIX G

Ethnic and racial makeup of coalition cities:

Race	San Francisco	Los Angeles	California	Nation
Latino	14%	45%	32%	13%
White	43%	31%	47%	75%
African American	8%	10%	6%	12%
Multi-Race	3%	2%	3%	2%
Asian	31%	12%	11%	4%
Other	.3%	.2%	.2%	6%

Financial figures for Coalition cities:

	San Francisco	Los Angeles	California	Nation
Median Household Income	55,221	42,189	47,177	43,318
Persons Below Poverty line	11%	18%	14%	12%
Unemployment Rate	7%	7%	7%	5%

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